

**MICHIGAN STATE EMPLOYEES  
DEFERRED COMPENSATION PLAN I (457)**

(Amended and Restated Effective October 1, 2000)

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## **MICHIGAN STATE EMPLOYEES DEFERRED COMPENSATION PLAN I (457)**

The State of Michigan hereby amends and restates the Michigan State Employees Deferred Compensation Plan I (457) (formerly known as the Michigan State Eligible Deferred Compensation Plan I (457)), effective as of October 1, 2000. As a part of this amendment and restatement, the State of Michigan incorporates herein the provisions of the separate Trust Agreement (establishing the “Michigan State Eligible Deferred Compensation Plan I (457) Trust”) adopted in connection with the Plan, effective January 1, 1999.

### **I. DEFINITIONS**

- 1.1 “State” shall mean the State of Michigan.
- 1.2 “Plan” shall mean the Michigan State Employees Deferred Compensation Plan I (457) (formerly known as the Michigan State Eligible Deferred Compensation Plan I (457)), as previously described and established by Resolution of the Michigan Civil Service Commission, dated April 19, 1974. This Plan is intended by the State to constitute an “eligible deferred compensation plan” within the meaning of Code Section 457(b).
- 1.3 “Member” shall mean an employee who meets the eligibility requirements of Article III and who defers compensation in accordance with the provisions of Article IV.
- 1.4 “Beneficiary” shall mean the person or persons designated by the member to receive the member’s benefits under this Plan after the member’s death, and as provided and subject to the restrictions set forth in 7.4.
- 1.5 “Deferred Salary” shall mean that portion of a member’s salary or wages set aside as a contribution to this Plan and not received by the member, as described in Article IV.
- 1.6 “Administrator” refers to the Director of the State of Michigan Department of Management and Budget, or his/her designee.
- 1.7 “Gross Compensation” shall mean gross income of a member before the deferred salary has been deducted.
- 1.8 “Includable Compensation” shall mean income remaining after the deferred salary has been deducted; that is, taxable income reported on a member’s W-2 form.

- 1.9 “Earliest Distribution Date” shall be that date which is the later of (i) 30 days after a member’s or Beneficiary’s election provided for in 7.1 is received by the Administrator, or (ii) 60 days following the date of a member’s separation from service (including separation due to total disability, retirement, or death).
- 1.10 “Earnings” shall mean net proceeds from interest-bearing and other investments, and other gains and losses experienced by the Trust Fund.
- 1.11 “Trust” or “Trust Fund” shall mean all such money or other property contributed to the Plan and held by the Trustee in trust pursuant to Code Section 457(g) and (initially) the separate Trust Agreement adopted in connection with the Plan on December 29, 1998, effective January 1, 1999, the provisions of which are incorporated into this amended and restated Plan and Trust document.
- 1.12 “Trustee” refers to the Director of the State of Michigan Department of Management and Budget, or his/her designee who has executed this Plan and Trust document as trustee.
- 1.13 “Code” shall mean the Internal Revenue Code of 1986, as amended.
- 1.14 “Plan Year” means the 12-month period ending December 31, which shall be the period serving as the basis for the Plan’s annual record keeping.

## **II. PURPOSE**

- 2.1 For the State. To strengthen the State’s ability to attract and retain qualified employees through provision of a tax-deferred savings plan via payroll deduction.
- 2.2 For the Employees. To provide a tax-sheltered savings plan which will improve retirement income and retirement security.

## **III. ELIGIBILITY TO PARTICIPATE**

Employees of the State are eligible for membership under the Plan, but only to the extent the Administrator has approved participation for the group of State employees or department in which the individual is employed. Such eligibility, however, shall terminate any time employment with the State is terminated. All deferred compensation distributable to members under the Plan shall be paid pursuant to Articles VII, VIII and IX hereunder.

#### **IV. DEFERRED SALARY CONTRIBUTIONS**

- 4.1 Deferred Salary Election. An eligible employee, including a new employee, may become a member of the Plan by enrolling in the Plan and designating an amount of such member's salary or wages to be deferred under the Plan, through the Plan's automated system or in another manner as prescribed by the Administrator. Such deferred amount shall hereinafter be referred to as "deferred salary" and shall only be paid to the member (or his/her Beneficiary in case of death) at retirement, separation from service, death or other contingency hereinafter provided.
- 4.2 Timing of Election. A member shall make any desired change in the member's deferred salary deduction election through, and only at such times as are permitted by, the Plan's automated system or other process as established by the Administrator. Notwithstanding the foregoing provisions of this Section and 4.1, a member's deferred salary deduction election (or any change thereto) shall not take effect, until the first day of the month following the making of (or change in) such election.
- 4.3 Duration. The deferred salary deduction election by a member shall continue for all future deferral periods until either changed or canceled by the member.
- 4.4 Cancellation. A deferred salary deduction election may be canceled by a member at any time through the Plan's automated system or other process as established by the Administrator. In the event of a cancellation, all previously deferred salary amounts, and all earnings thereon, shall at all times remain assets of the Trust Fund, with payments to the member subject to Articles VII and IX. Cancellation will become effective the next administratively feasible pay period following receipt of the cancellation request.
- 4.5 Limitation on Amount. The amount of deferred salary shall not exceed 25% of the member's gross compensation for any Plan Year (so that the deferred amount excluded from the member's income shall not exceed 33-1/3% of the member's includable compensation), or \$8,000 (as adjusted for any calendar year to reflect increases in cost-of-living in accordance with Code Sections 457(e)(15) and 415(d)), whichever is less.
- 4.6 Coordination of Limits With Other Plans. If a member participates in another deferred compensation plan as described in Code Section 457(c), any amount deferred under such plan(s) will reduce the \$8,000 limit on amounts that may be deferred under this Plan during any Plan Year set forth in 4.5 (as adjusted for cost-

of-living), and any greater Catch-up contribution amount determined pursuant to 4.7.

- 4.7 Limited Catch-Up Provision. Members whose total of deferred salary contributions under the Plan is less than 33-1/3% of includable compensation (25% of gross compensation) for all periods of employment beginning on the later of January 1, 1979 or the member's date of hire with the State, may elect to invoke a "Catch-up" provision for the three taxable years prior to the member's "Normal Retirement Age" (as defined below).

Calculating the amount of the Catch-up contribution shall be accomplished by totaling the maximum amount that could have been contributed pursuant to 4.5 for each year the member was employed by the State (excluding service before January 1, 1979), subtracting the total amount deferred during such period, and then dividing by the remaining years (not to exceed three) prior to Normal Retirement Age (as defined below). The result equals the amount a member can defer in addition to the normal contribution determined pursuant to 4.5; provided the total amount of deferred salary contributions for any Plan Year under this Catch-up provision cannot exceed \$15,000.

A member may not elect to have the limited Catch-up provision of this Plan apply more than once, whether or not the limited Catch-up is utilized in all of the three taxable years ending before the member's Normal Retirement Age, and whether or not the member or former member rejoins the Plan or participates in another eligible plan after retirement.

"Normal Retirement Age" shall mean the age elected by the member, which may not be earlier than the following:

- A. For all State employees, except as otherwise specified below - age 55 or older with 30 years of qualified State service, or age 60 or older with 10 years of qualified State service, whichever applies.
- B. State Police Officers - the age an employee achieves 25 years of State police service.
- C. Conservation Officers - the age an employee achieves 25 years of State service, with at least 23 of the 25 years (including the last 2 years) served as a Conservation Office.
- D. Correction Officers and other employees in covered positions - age 51 or older with 25 years of State service in a "covered" position, or age 56 or older with 10 years in a "covered" position; provided in either case that the



last three years are served in a “covered” position. “Covered” positions (as defined by State retirement statute) are generally jobs that are in direct contact with prison residents.

- E. Judges - any of: (i) the age an employee achieves 25 years of State service, (ii) age 55 or older with 18 years of State service, or (iii) age 60 or older with 10 years of State service.
- F. Legislators - age 55 or older with 8 years of State service.

Notwithstanding the foregoing, the Normal Retirement Age for any member shall not be (i) earlier than the earliest age at which the member has the right to retire without the consent of the State and to immediately receive unreduced retirement benefits under the basic State retirement plan applicable to such member, nor (ii) later than the date of the member’s separation from service.

- 4.8 Prevention and Correction of Excess Deferrals. If the Administrator determines that any of the deferral limits set forth in 4.5, 4.6 or 4.7 may be exceeded, the Administrator may reduce or suspend deferred salary amounts for any member, as necessary.

In the event a member’s deferred salary exceeds any of such limits (such excess being deemed an “Excess Deferral”), either at the member’s request or as determined by the Administrator (including any contributions made by a mistake of fact), all or any portion of the member’s Excess Deferral, plus attributable income or loss, may be distributed to the member, subject to the Administrator’s determination that such distribution is permitted under this Plan and applicable rules and regulations and such procedures as prescribed by the Administrator.

## **V. DEFERRED SALARY ACCOUNTS**

A separate account under the Trust Fund shall be maintained for each member of the Plan, to which shall be credited during the year, at such times as shall be prescribed by the Administrator (and in accordance with Article VI), an amount equal to the member’s deferred salary with respect to the year. Such account shall be known as the particular member’s “deferred salary account.”

The member’s deferred salary account shall be credited or debited from time to time to reflect any expenses incurred by or charged to such account and the earnings, gains and losses which have been realized from the investments of such account under the Trust Fund. The Administrator and Trustee of the Trust Fund will coordinate their efforts to

maintain sufficient accounting records to identify the individual deferred salary account balances and the changes thereto under the Trust Fund, for all members of the Plan. Daily valuation record keeping shall be used by the Plan, unless another valuation method is implemented by the Administrator.

## **VI. INVESTMENT OF DEFERRED SALARY ACCOUNTS**

- 6.1 Declaration of Trust. Notwithstanding any contrary provision of this Plan and Trust document, in accordance with Code Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in the Trust Fund for the exclusive benefit of members and Beneficiaries under the Plan. The Trust Fund was initially established pursuant to the written Trust Agreement noted above, the provisions of which are incorporated into this amended and restated Plan and Trust document. The Trust constitutes a valid trust under the law of the State of Michigan, and is intended to be exempt from taxation pursuant to Code Section 501(a).
- 6.2 Deposit of Deferred Salary Amounts. All amounts of compensation deferred under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the accounts of members. To comply with this requirement, all amounts of compensation deferred under the Plan shall be transferred to the Trust Fund not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the member.
- 6.3 Investment Direction. All members of the Plan may direct the investment of their deferred salary accounts, in accordance with such investment choices and procedures as are made available and determined by the Administrator and the Trustee of the Trust Fund from time to time. Investment directions by a member shall be in the format and subject to the procedures prescribed through the Plan's automated system or in another manner as prescribed by the Administrator, and shall be effective only as provided under such procedures. The Trustee may rely upon such direction and upon the continuance of the direction contained therein until it is revoked or modified in the same manner. The Trustee shall invest the portion of the member's deferred salary account for which the member does not direct the investment, in the manner the Trustee deems advisable in its sole discretion.

## **VII. QUALIFICATION FOR PAYMENT OF DEFERRED SALARY ACCOUNT**

- 7.1 General. Except as provided in 7.3, the member or Beneficiary may, no later than 60 days after the member's separation from service (including separation due to total disability, retirement, or death), elect an irrevocable distribution date that falls on or after the member's or Beneficiary's earliest distribution date.

If a member or Beneficiary so fails to designate a time payments are to begin, then payments from the member's deferred salary account shall begin 90 days following the date of the member's separation from service with the State. All sums shall be payable in accordance with the schedule in 9.3.

A member who is on a leave of absence or layoff is not (for purposes of this Plan) deemed separated until the leave of absence or layoff has expired. If a member is reinstated in a position with the State within 30 days following separation, no amounts from the member's deferred salary account shall be payable with respect to the member's initial separation.

Notwithstanding the foregoing, no payment under this Plan shall commence later than the April 1 following the calendar year in which the member attains age 70½ or, if later, the April 1 following the calendar year in which the member retires.

- 7.2 Payment Upon Death, Total Disability or Unforseeable Emergency. The following provisions shall apply in the events of death, total disability, and unforeseeable emergency (as defined below):

- A. Death. In the event that a member should die prior to receiving payment of any portion of his/her deferred salary account, the Beneficiary shall (except as provided below or in 7.4) be allowed the same rights as though the Beneficiary was the member.

Effective for amounts payable prior to October 1, 2000, a Beneficiary's rights to receive payment under the Plan may be restricted by the member by filing written notice with the Administrator; a form for this purpose will be available from the Administrator at the member's request. If such action is exercised by the member, the method of payout to the Beneficiary which is specified by the member shall be limited to one or more of the methods of payout that would otherwise have been available under the Plan, had the member lived, or in accordance with 9.3. The foregoing notwithstanding, effective October 1, 2000, a member shall no longer be permitted to restrict a Beneficiary's rights to receive payment under the Plan, and all prior election forms filed with the Administrator to this effect shall be deemed revoked as of that date and/or shall not be implemented.

Notwithstanding the foregoing, payment to a Beneficiary under this Section shall begin not later than the following: (i) where the Beneficiary is the member's Spouse and payments will be made over a period not exceeding the Spouse's life expectancy, the last day of the calendar year in which the member would have attained age 70½ or, if later, the last day of the calendar year following the year in which the member died; (ii) for other Beneficiaries, where payments will be made over a period not exceeding the Beneficiary's life expectancy (subject to a maximum of 15 years), the last day of the calendar year following the year in which the member died; or (iii) in all other cases, the last day of the calendar year that includes the fifth anniversary of the member's death (provided that payment of all amounts in the member's deferred salary account must also be completed by such date).

- B. Total Disability. If a member separates from service due to becoming totally and permanently disabled, he/she shall become entitled to payment from the member's deferred salary account upon the date such disability is determined to be total and permanent, as defined and ruled under the applicable State retirement system. Payment from the member's deferred salary account shall begin as provided in 7.1.
- C. Unforeseeable Emergency. In the event of an unforeseeable emergency (as determined by the Administrator under this Section and in accordance with Code Section 457(d) and the regulations promulgated thereunder), payments can be made to the member.

An unforeseeable emergency is (i) a severe financial hardship to the member resulting from a sudden and unexpected illness or accident of the member or a dependent of the member, or (ii) a loss of the members' property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the member. Payment may not be made to the extent that such hardship is or may be relieved: through reimbursement or compensation by insurance or otherwise; by liquidation of the member's assets (to the extent such liquidation would not itself cause severe financial hardship); or by cessation of deferrals under the Plan.

A written application for a hardship distribution shall be filed with the Administrator or its designee, and contain a complete explanation of the emergency. If emergency payment is granted, only the amount reasonably needed to satisfy the emergency need will be paid. All payments paid hereunder shall be paid minus any withholding of income taxes; the date of withdrawal will be the date that appears on the check for payment. If

the unforeseeable emergency distribution is approved, all future salary deferrals to the Plan, and to all other deferred compensation plans maintained by this State, shall be suspended for one year from the date of the unforeseeable emergency distribution.

- 7.3 Additional Election to Defer Commencement of Payments. If a member has elected, in accordance with the Plan, to defer the commencement of distributions beyond the first permissible payout date, then the member may make an additional election to further defer the commencement of distributions, provided that the election is filed before distributions actually begin and the later commencement date meets the required distribution commencement date provisions of Code Sections 401(a)(9) and 457(d)(2). A member may not make more than one such additional deferral election after the first permissible payout date.

For purposes of the preceding paragraph, the “first permissible payout date” is the earliest date on which the Plan permits payments to begin after separation from service, disregarding payments to a member who has an unforeseeable emergency or attains age 70½, or under the in-service distribution provisions of the Plan (if any).

- 7.4 Designation of Beneficiary. Subject to the restrictions set forth below, a member may designate one or more Beneficiary(ies) by filing a signed designation with the Administrator in the form approved by the Administrator; such designation may be changed or revoked by the member in writing at any time. The member's will is not effective for this purpose. The Beneficiary shall receive the same rights allowed the member should the member die, except for the right to (i) change any other beneficiary(ies) previously named by the member, or (ii) receive a withdrawal due to unforeseeable emergency under 7.2C of this Plan.

- A. Death of Designated Beneficiary. Unless otherwise designated by the member: If distribution is being made to a primary Beneficiary designated by the member who dies before complete distribution, the remaining amount in the account shall be paid to the member's contingent Beneficiary (if any). If distribution is being made to more than one primary Beneficiary, upon the death of a Beneficiary distribution shall continue to the survivor or survivors of them, and any remaining amount in the account upon the death of the last surviving primary Beneficiary shall be paid to the contingent Beneficiary (if any).
- B. No Designated Beneficiary. If a deceased member fails to designate a Beneficiary, or has no surviving Beneficiary on the date a distribution is payable, the remaining balance shall be paid in a lump sum to the member's Spouse, or if there is no surviving Spouse, to the member's legal

representative, or if there is no legal representative, to the member's estate, if then under the active administration of a probate or similar court, or if not, to those persons who would then take the member's personal property under the Michigan intestate laws then in force and in the proportions provided therein, as though the member had died at such time. For purposes of this Plan, "Spouse" means the member's husband or wife at any specified time; a former Spouse shall not be a Spouse except to the extent specified in a PADRO.

- C. Determination. The Administrator shall apply the rules of this section to determine the proper persons to whom payment should be made. The decision of the Administrator shall be final and binding on all persons.

## **VIII. PLAN-APPROVED DOMESTIC RELATIONS ORDERS**

- 8.1 Definition. Distributions to an "alternate payee" pursuant to a plan-approved domestic relations order ("PADRO") are permitted by the Plan, provided:

- A. The PADRO is a domestic relations order which includes all of the following information:
1. The name, last known address, and social security number of the member;
  2. The name, last known address, and social security number of the alternate payee;
  3. The amount of the benefit to be paid to the alternate payee or the percentage of the member's benefit to be paid to the alternate payee;
  4. The number of payments or period over which payments are to be made pursuant to the domestic relations order; and
  5. A statement that the PADRO applies to the Plan and that the Plan shall make payments to the alternate payee as required under the domestic relations order.
- B. 1. The PADRO does not require the Plan to provide a type or form of benefit or payment not provided under the Plan;

2. The PADRO does not require the payment of a benefit to an alternate payee that is required to be paid to another alternate payee under a previously filed domestic relations order; and
3. The PADRO does not require the Plan to provide an increased benefit determined on the basis of actuarial value.

C. All applicable conditions as set forth in this Article VIII are met.

- 8.2 Distribution Restrictions. No distribution may be made to an alternate payee before the amounts distributed would otherwise be available to the member under the Plan. Further, the rights of the alternate payee under this Plan may never be greater than those of the Plan member to whom the PADRO relates. Specifically: (i) no distribution of benefits to an alternate payee shall commence earlier than the related Plan member's separation from service (including separation due to total disability, retirement or death); and (ii) an alternate payee may not receive a distribution based on an unforeseeable emergency of either the member or the alternate payee.
- 8.3 PADRO Procedures. The Administrator shall establish procedures to determine whether or not a domestic relations order is a PADRO, to notify the member and any alternate payee of this determination, and to administer amounts held and distributions made pursuant to a PADRO. If so directed by a PADRO, or as otherwise required to comply with the provisions of this Article VIII, the Administrator is authorized to segregate the funds to which an alternate payee is entitled under a PADRO and to create and maintain a separate deferred salary account for the benefit of such alternate payee, with respect to which the alternate payee shall have the same rights as the related Plan member; provided, however, that the alternate payee shall not be permitted to deposit or contribute any additional amounts to such account at any time.

## **IX. PAYMENTS FROM DEFERRED SALARY ACCOUNTS**

- 9.1 General. If a member's deferred salary account becomes payable as provided under Article VII, all payments from such account shall be made in accordance with this Article IX. Subject to certain limitations set forth herein, a member may elect, at any time up until 30 days before payment is scheduled to commence pursuant to 7.1 (or as deferred under 7.3), to receive payment in any one or more (up to a maximum of three) of the different payment options available under 9.2.

Any other provisions of this Plan notwithstanding, all payments from the Plan must be made in accordance with the minimum distribution rules of Code Section 401(a)(9) (including the incidental death benefit rules of Code Section 401(a)(9)(G)), and the special distribution rules of Code Section 457(d)(2) (to the extent such rules are applicable to governmental plans), and the requirements thereof are hereby incorporated and applied to this entire Article by reference. Specifically (but not by way of limitation): (i) a member's deferred salary account will begin to be distributed no later than the time specified in 7.1, and be distributed over a period not exceeding the member's life expectancy or the joint life expectancy of the member and his/her Beneficiary (subject to limitation in order to comply with the incidental death benefit rules, if the Beneficiary is not the member's Spouse); (ii) in the event of the member's death prior to commencement of payments hereunder, a member's deferred salary account will begin to be distributed no later than the time specified in 7.2A, and be distributed over a period not exceeding the Beneficiary's life expectancy (subject to a maximum of 15 years, if the Beneficiary is not the member's Spouse); (iii) in the event of the member's death after commencement of payments hereunder, payments will be distributed to the member's Beneficiary under the same method of distribution in effect at the member's death; and (iv) any form of distribution payable over a period of more than one year must be made in substantially nonincreasing amounts, payable not less frequently than annually.

For all purposes under the Plan, "life expectancy" shall be based on the member's (and/or Beneficiary's) attained age at the birthday during the calendar year in which the member's minimum distributions under Code Section 401(a)(9) must commence. Life expectancy shall be determined from life expectancy Tables V and VI in Regulations 1.72-9. Election of the applicable life expectancy shall be irrevocable when distribution begins. If a life expectancy or shorter installment period is not elected, the member's life expectancy shall apply.

If a member (or Spouse, if the member is deceased, but not any other Beneficiary) so elects, life expectancy or the joint life expectancy of the member and Spouse may be redetermined annually under Code Section 401(a)(9) and applicable regulations. The election must be irrevocable when made and must be made not later than the member's "required beginning date" under Code Section 401(a)(9). If redetermination is not elected, the applicable life expectancy for each calendar year after the calendar year in which installments begin shall be the life expectancy or joint life expectancy for the first calendar year reduced by one year for each calendar year after the year in which installments begin.

The Administrator is authorized to implement these minimum and special distributions rules regardless of the specific payment method or methods elected



by a member hereunder, including but not limited to, conducting an annual review and adjusting payouts to comply with these rules.

- 9.2 Optional Payment Methods. Subject to 9.1 and 9.3, the methods of payment which may be elected under the Plan by members are as follows (provided that Methods A, B and D may only be elected with respect to deferred salary account balances of such a size as will generate a total payment of at least one-hundred dollars (\$100.00) per month):
- A. A Monthly or Annual Payment Spread Over a Specific Number of Years.  
The amount of each monthly payment at time of distribution shall be calculated by dividing the number of months in the period specified by the member (not to exceed the member's life expectancy or the joint life expectancy of the member and his/her Spouse), into the member's deferred salary account balance. The quotient plus a pro rata share of the periodic anticipated interest on the member's deferred salary account balance for the remainder of the period (as adjusted annually), shall be the periodic payment made to the member.
  - B. A Specific Amount Paid Monthly or Annually Until The Account Balance is Exhausted. (NOT available for elections filed after September 30, 2000.) Earnings added to the account during the payout period will extend the time payments will continue, but in no case shall the payout period exceed 20 years.
  - C. A Lifetime Income For The Member (Option 1) Or Lifetime Income For The Member And Spouse (Option 2).  
If a member's deferred salary account balance is at least \$30,000 at the time payments are scheduled to begin, a lifetime income payment may be elected, with the payment amount being calculated as the negotiated annuity rate in a terminal funding agreement with an insurance company times the member's deferred salary account balance. The annuity rates would be the rates for life income installment refund for Option 1 and life income joint and survivorship with 10 years certain for Option 2.
    - 1. Option 1. Lifetime income is paid to the member for as long as the member should live. If member dies with a remaining balance, the balance is paid to the member's beneficiary in the same monthly amount until balance is exhausted.
    - 2. Option 2. Lifetime income for the member and the member's spouse with payments certain for 10 years if both should die after payments have begun.

- D. Monthly Or Annual Payments That Increase (Or Decrease) As Earnings (Or Losses) Are Applied. The amount of the monthly or annual payment is determined by dividing the member's deferred salary account balance by the number of months or years remaining in the payout period specified by the member (not to exceed the member's life expectancy or the joint life expectancy of the member and his/her Spouse).

Annual payments will increase (or decrease) each year (and monthly payments will increase (or decrease) each month), as earnings (or losses) are applied to the deferred salary account balance and calculated into the remaining payments.

- E. Lump Sum - Either Whole or Partial.

- 9.3 Default Payment Methods. When a member or Beneficiary fails to elect one of the foregoing methods of payment of his/her deferred salary account upon separation from service (including separation due to total disability, retirement, or death), or if the member's deferred salary account balance is less than \$5,000, then the method of payment to be implemented for the member or Beneficiary under the Plan shall be determined in accordance with the following schedule, based on the amount of the member's deferred salary account balance at the time payments are to begin:

<u>Account Balance</u>	<u>Method of Payment</u>
Less than \$5,000	Lump sum
\$5,000 to \$50,000	Monthly Payments for a 5 year period
\$50,001 and over	Monthly Payments for a 10 year period

## **X. PLAN-TO-PLAN TRANSFERS**

If a member separates from State service in order to accept employment with another governmental entity, or if a member from another governmental entity separates from service with that entity in order to accept employment with the State, the member's deferred salary account under this Plan may be transferred to an eligible deferred compensation plan maintained pursuant to Code Section 457 by such entity, or vice versa, provided that the plan sponsored by such other governmental entity provides for the transfer and acceptance of such amounts. A transfer request form is provided by the Administrator at the member's request for this purpose.

## **XI. ADMINISTRATION OF THE TRUST**

### **11.1 Duties and Powers of the Trustee.**

- A. Duties of the Trustee. The Trustee shall be a named fiduciary having the following duties:
1. Control, Manage, and Invest Assets. To control, manage, and invest Trust assets, except to the extent investment responsibility is expressly granted to members under 6.3 of this Plan or to an Investment Manager appointed by the State or Administrator;
  2. Administrator's Instructions. To carry out the instructions of the Administrator; and
  3. Records; Reports. To maintain records and to prepare and file reports required by law or applicable regulations, other than those for which the Administrator is responsible under the terms of this Plan.
- B. Powers of the Trustee. The Trustee shall have the following powers:
1. Control Property. To hold, manage, improve, repair, and control all property, real or personal, forming part of the Trust;
  2. Asset Investment. To invest and reinvest Trust assets, subject to the limitations in 6.3 of this Plan or as set forth below, without distinction between principal and income, in common or preferred stocks, bonds, mortgages, leases, notes, debentures, mutual funds, guaranteed investment contracts, other securities, and other real or personal property, including, without limitation, interest-bearing deposits, pooled investment funds of a custodian, and cash.
  3. Disposition of Asset. To sell, convey, transfer, exchange, partition, lease for any term, or otherwise dispose of a Trust asset from time to time, in the manner, for the consideration, and upon the terms and conditions that the Trustee, in its discretion, determines;
  4. Agents, Advisers, and Counsel. To employ and to compensate from the Trust agents, advisers, and legal counsel (who may be the Attorney General or counsel appointed by the Attorney General) reasonably necessary in managing the Trust and advising the Trustee as to its powers, duties, and liabilities;

5. Claims. To prosecute, defend, settle, arbitrate, compromise, or abandon all claims and demands in favor of or against the Trust, with or without the assistance of legal counsel;
6. Vote Securities. To vote a corporation's stock or other securities, either in person or by proxy, for any purpose;
7. Exercise Trust Rights. To exercise, refrain from the exercise of, or convey a conversion privilege or subscription right applicable to a Trust asset;
8. Collection. To demand, collect, and receive the principal, dividends, interest, income, and all other moneys or other property due upon Trust assets;
9. Change of Structure. To consent to, oppose, or take another action in connection with a bankruptcy, composition, arrangement, reorganization, consolidation, merger, liquidation, readjustment of the financial structure, or sale of assets of a corporation or other organization, the securities of which may constitute a portion of the Trust;
10. Issue, Hold, or Register Securities. To cause securities or other property forming part of the Trust to be issued, held, or registered in the individual name of the Trustee, in the name of its nominee or in such form that title will pass by delivery, provided that the records of the Trustee shall indicate the ownership of the property or security;
11. Borrowing. To borrow money for the benefit of the Trust without binding itself individually, and to secure the loan by pledge, mortgage, or creation of another security interest in the property;
12. Distributions. To make distributions from the Trust as directed by the Administrator;
13. Expenses. Unless paid by the State, to pay from the Trust all reasonable fees, taxes, commissions, charges, premiums, and other expenses, including the reasonable fees incurred by the Trustee or Administrator, in connection with the administration of this Plan or Trust, provided that the Trustee shall serve without compensation;

14. Insure Assets. To insure Trust assets through a policy or contract of insurance;
15. Incorporate. To incorporate (or participate in an incorporation) under the laws of any state for the purpose of acquiring and holding title to any property that is part of the Trust;
16. Depository. To keep on deposit with a custodian in the United States any part of the Trust; and
17. Other Acts. To perform all other acts the Trustee deems necessary, suitable, or desirable for the control and management of the Trust and discharge of its duties.

C. Limitation on General Duties and Powers of the Trustee. The Trustee shall not be required to exercise a responsibility assigned to the State or the Administrator under this instrument. Except for powers and duties specifically allocated to the Trustee under this Plan, the Trustee is not responsible to interpret the terms of this Plan, and the Trustee may request, is entitled to receive, and shall act in accordance with written directions from the Administrator as to the payment of benefits and on any point requiring construction or interpretation of Plan documents. The Trustee is entitled to rely on any such direction and shall have no duty to verify it unless it is inaccurate on its face. Where any dispute arises as to whom payment or the delivery of any funds or property should be made by the Trustee, the Trustee may postpone such payment or delivery until the dispute shall have been adjudicated by a court of competent jurisdiction or until the Trustee shall have been indemnified to its satisfaction against loss. The Trustee shall be under no duty to enforce payment of any contribution to the Trust.

D. Limitation on Investment Duties and Powers of the Trustee. To the extent a member directs the investment of his/her account or an Investment Manager is appointed by the State or the Administrator to manage and invest some or all of the Trust assets, the Trustee shall not have the above-specified duties and powers with respect to investment of Trust assets subject to the member's control. "Investment Manager" shall mean a registered investment advisor under the Investment Advisors Act of 1940, a bank as defined in such Act, or an insurance company licensed to perform the services described herein under the laws of more than one state; and which has acknowledged in writing that it is a fiduciary with respect to the Plan. The powers and duties of the Trustee with respect to such assets shall be limited to the following:

1. Custody and Protection. Unless otherwise provided, to have custody of the Trust assets, and to protect the assets in its custody from loss by theft, fire, or other cause;
2. Custodian. To act as custodian of Trust assets unless the State appoints another custodian;
3. Acquisitions. To acquire additional assets for the Trust in accordance with the direction of the member or the Investment Manager;
4. Dispositions. To sell or otherwise dispose of Trust assets in accordance with the direction of the member or the Investment Manager;
5. Accountings. To account for and render accountings with respect to the Trust;
6. Authorized Actions. To take authorized actions for and on behalf of the Trust in accordance with the direction of the member or the Investment Manager; and
7. Ministerial and Custodial Tasks. To perform other ministerial and custodial tasks.

The Trustee shall have no obligation or power to exercise discretionary authority or control with respect to the investment of the assets subject to direction by members or management by an Investment Manager, or to render advice regarding the investment of such assets. The Trustee shall not be liable for the investment performance of the assets subject to direction by members or management by an Investment Manager.

11.2 Accounting. The Trustee shall maintain accurate and detailed records of all investments, receipts, disbursements, and other transactions for the Trust. The records shall be available for inspection at all reasonable times by persons designated by the Administrator.

- A. Report. As soon as administratively feasible after each Plan Year-end and each other date agreed to by the Administrator and the Trustee, the Trustee shall prepare and furnish to the Administrator a statement of account.

- B. Judicial Settlement. A dispute concerning the Trustee's records or statement of account may be settled by a suit for an accounting brought by any member or Beneficiary.
- 11.3 Trustee Action. Actions taken by a Trustee shall be by written instrument executed by the Trustee.
- 11.4 Removal of Trustee. The Trustee may be removed by action of the State at any time, acting through the Plan Administrator, via written notice to the Trustee. Upon any such removal, the State shall appoint a successor trustee, who shall have the same powers and duties as those conferred upon the Trustee which has been removed. A Trustee whose appointment is revoked by the State shall promptly deliver to the Administrator an accounting and all Trust assets in its possession, together with all documents necessary to transfer legal title thereto to a successor Trustee as designated by the State.

## **XII. RESPONSIBILITIES OF THE STATE**

- 12.1 No Tax Guarantee. Neither the State nor the Administrator guarantee any tax benefits or advantages under the Plan.
- 12.2 Good Faith Efforts. The State and the Administrator shall be exonerated and held free from any liability of any kind hereunder if any omissions, decisions made or actions taken in the administration of the Plan occur or are done in good faith.
- 12.3 Effect Upon Employment Relationship. Nothing in this Plan shall in any way affect the rights of either the State or any member to terminate the employment relationship between them.

## **XIII. RIGHTS OF MEMBERS**

- 13.1 General. Each employee, upon having elected to become a member, shall be deemed to have assented to the terms and conditions of the Plan. Each member shall at all reasonable times be allowed to examine the accounting records relating to his/her particular deferred salary account to determine its status and condition, and the State shall submit to the member periodic reports of the progress of his/her particular account.

- 13.2 Spendthrift Provision. A member's deferred salary account shall not be subject to assignment, conveyance, transfer, anticipation, pledge, alienation, sale, encumbrance, or charge, whether voluntary or involuntary, by a member or Beneficiary, unless otherwise provided in this Plan and Trust document or by the Administrator, or under a PADRO.
- A. Not Security. A member's deferred salary account shall not provide collateral or security for a debt of a member or Beneficiary or be subject to garnishment, execution, assignment, levy, or to another form of judicial or administrative process or to the claim of a creditor of a member or Beneficiary, through legal process or otherwise, except as otherwise permitted under the Code.
- B. Attempts Void. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of benefits payable, before actual receipt of the benefits, or a right to receive benefits, shall be void. The Trust shall not be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any member or Beneficiary entitled to benefits. The benefits and Trust assets under this Plan shall not be considered an asset of a member or Beneficiary in the event of insolvency or bankruptcy.
- 13.3 Military Service. Any other provisions of this Plan notwithstanding, contributions, benefits and service credit with respect to qualified military service will be provided under the Plan, in accordance with Code Section 414(u).

#### **XIV. TERMINATION OR AMENDMENT**

The Administrator reserves the right to terminate future deferrals of salary under the Plan at any time. Upon termination, the Plan and Trust will continue in operation, and payment of deferred salary will continue to be made from the Trust as provided in Articles VII, VIII and IX. The Administrator shall have the right to amend this Plan and Trust document at any time and from time to time, provided, however, that no such amendment shall, with respect to any member, reduce payments derived from deferred salary credited to him/her prior to the effective date of any such amendment, nor shall any amendment alter the duties, responsibilities, or liabilities of the Trustee without the consent of the Trustee.



## **XV. ADMINISTRATION**

15.1 General. The Administrator shall supervise the enrollment and operation of the Plan, and maintain confidential records. The Administrator may issue such supplemental administrative regulations as are required, or as are determined in the Administrator's discretion to be advisable, to ensure the orderly administration of the Plan set forth in this plan document. No supplemental administrative regulation, however, shall substitute for or alter this basic plan document in any way.

15.2 Advisors; Delegation. The Administrator shall have the power to employ attorneys (who may be the Attorney General or counsel appointed by the Attorney General), actuaries, accountants, clerical employees, agents, or other persons who are necessary for operation, administration, and management of this Plan.

The Administrator may delegate an administrative duty to any such advisor. The delegation shall be in writing and shall specify (i) the date of the action and the effective date of the delegation; (ii) the responsibility delegated; (iii) the name, office, or other reference of each person to whom the responsibility is delegated; and (iv) if a responsibility is delegated to more than one person, the allocation of the responsibility among the persons. The delegation shall be communicated to the person to whom the responsibility is assigned, and written acceptance of the responsibility shall be made by such delegate. Such delegate shall retain the responsibility until that person resigns or rejects the responsibility in writing, or the Administrator takes a superseding action. If a delegate's powers or actions conflict with those of the Administrator, the powers of and actions of the Administrator will control.

15.3 Claims Procedure. The Administrator shall determine all issues arising from the administration of this plan. Unless the Administrator shall establish alternative claim procedures, the following shall apply:

A. Initial Determination. Upon application for payment of benefits (or other claims) under the Plan by a member or beneficiary, the Administrator shall make an initial determination and communicate the determination to the member or beneficiary within 90 days after the application. If the initial determination requires a longer period, the Administrator shall notify the member or beneficiary that the 90-day period is extended to 180 days.

B. Method. The decision of the Administrator shall be in writing. The decision shall set forth (i) the decision and the specific reason for the decision; (ii) specific reference to the Plan provisions on which the decision is based; (iii) a description of additional material, information, or

acts that may change or modify the decision; and (iv) an explanation of the procedure for further review of the decision.

- C. Further Review. Within 60 days of receipt of the initial written decision, the member or beneficiary filing the original application, or the applicant's authorized representative, may make a request for redetermination by the Administrator. The applicant (or the authorized representative) may review all pertinent documents and submit issues, comments, and arguments.
- D. Redetermination. Within 60 days of receipt of an application for redetermination, unless special circumstances require a longer period of time (but not longer than 120 days after receipt of the application), the Administrator shall provide the applicant with its final decision, setting forth specific reasons for the decision with specific reference to Plan provisions on which the decision is based.

#### **XVI. GOVERNING LAW**

Except as superseded by the Code, this Plan and Trust shall be governed by and construed in accordance with the laws of the State of Michigan.

IN WITNESS WHEREOF, the State of Michigan has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2000, effective as of October 1, 2000.

STATE OF MICHIGAN

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By: Christopher M. DeRose,  
Director, Michigan Office of Retirement Services  
Title: Plan Administrator

## ACCEPTANCE

The Director of the Michigan Office of Retirement Services, as the designee of the Director of the State of Michigan Department of Management and Budget, and as successor trustee to the State of Michigan Treasurer, hereby accepts the duties, powers and responsibilities of the Trustee as described in Articles VI and XI of the foregoing amended and restated Michigan State Employees Deferred Compensation Plan I (457), effective as of October 1, 2000.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Christopher M. DeRose,  
Director, Michigan Office of Retirement Services  
Title: Trustee

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